

OCT 07 2009

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDGAR BARRAGAN,

Defendant - Appellant.

Nos. 08-10424

08-10458

D.C. Nos. 05-CR-00250-AWI

05-CR-00368-AWI

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, Chief District Judge, Presiding

Submitted September 14, 2009^{**}

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Edgar Barragan appeals the denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his 70-month sentence, imposed following his guilty-plea conviction for possession of cocaine base with intent to distribute, in violation of 28 U.S.C.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, *see United States v. Colson*, 573 F.3d 915 (9th Cir. 2009) (order), and we affirm.

Barragan contends that the district court abused its discretion when it denied his motion after considering the seriousness of the drug offense and the benefits of the plea agreement. The district court properly took these facts into account when it considered the factors of 18 U.S.C. § 3553(a), and did not abuse its discretion by denying the motion. *See* 18 U.S.C. § 3582(c)(2); *United States v. Aguilar-Ayala*, 120 F.3d 176, 179 (9th Cir. 1997) (“Section 3582(c)(2) . . . require[s] a sentencing court . . . to account for the factors set forth in section 3553(a)[.]”) (internal quotation marks omitted).

AFFIRMED.